Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.4687 OF 2024

Sachin Waman Mhatre … Applicant
V/s.
The State of Maharashtra … Respondent

Mr. Sudhir C. Halli i/b Ms. Ruchita Halli, for the applicant.

Mr. Prasanna P. Malshe, APP for the State – respondent.

Mr. T. S. Pawar, PSI, Tilak Nagar Police Station, Dombivali.

CORAM : AMIT BORKAR, J.

DATED : JULY 17, 2025

P.C.:

1. The present application for bail is filed by the applicant under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeking his release in connection with Crime Register No. 662 of 2024, registered with Tilak Nagar Police Station, Dombivli. The applicant has been booked for the offence punishable under Section 420 of the Indian Penal Code, 1860, which deals with cheating and dishonestly inducing delivery of property. Additionally, the provisions of Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (MPID Act) have also been invoked against the applicant, alleging that he accepted deposits from the complainant and failed to return the same.

2. As per the case of the prosecution, the informant was induced by the applicant to invest money in the share market, with the assurance that her investment would double within a short period. The applicant, who claims to be the proprietor of a firm called Swami Enterprises, allegedly assured the informant of guaranteed profits and, on the strength of such assurance, obtained a total investment of ₹29 lakh from her. The said amount was credited to the bank account of the applicant maintained with Bank of Baroda. However, it is the prosecution's case that the applicant neither returned the principal amount nor gave any profits as promised. Instead, he kept giving excuses and false assurances to the informant and avoided repayment.

3. On the other hand, the FIR itself reveals that the informant was made aware that the investment was being made in the share market, which is well known to be subject to market risks. The informant voluntarily requested the applicant to invest her money despite knowing the risks. The applicant claims that he had clearly disclosed to the informant that there was no guarantee of fixed returns, and any gain or loss would depend on the share market performance. It is further submitted that due to the economic slowdown during the COVID-19 pandemic, he incurred losses in the share market. The applicant contends that he has already repaid ₹5 lakh to the informant and is ready and willing to return the remaining amount. He further submits that unless he is released on bail, he will not be able to make any financial arrangements for clearing the outstanding dues. It is also pointed out that his earlier bail application was rejected by the learned Sessions Court, hence the present application.

4. Learned Advocate appearing on behalf of the applicant submitted that the transaction in question is purely civil in nature, and it is nothing but a private loan transaction. Due to financial hardship, the applicant could not repay the full amount. It is argued that no criminal intent or deception was present at the inception of the transaction. Moreover, no other investor or person has come forward with a similar complaint against the applicant. It is also emphasized that the applicant has been in judicial custody since 4th October 2024, and that the maximum punishment for the offence under Section 420 IPC is seven years, which is not a bar for consideration of bail under ordinary circumstances. Therefore, it is prayed that the applicant may be enlarged on bail.

5. On the other hand, the learned APP has strongly opposed the grant of bail. It is submitted that the assurance of doubling the money, right from the beginning, was a false representation made by the applicant with an intention to cheat. The learned APP contends that mere part-payment of the amount or readiness to pay does not dilute the gravity of the offence or cleanse the transaction of its alleged fraudulent character. However, the learned APP fairly states that the applicant has no criminal antecedents and no other complaint is registered against him at Tilak Nagar Police Station, Dombivli. It is, therefore, submitted that considering the nature of allegations, the bail application may be rejected at this stage.

6. I have carefully considered the submissions advanced by the learned Advocate for the applicant and the learned APP for the State. I have also gone through the contents of the FIR, the documents placed on record, and the overall nature of the allegations.

7. It is not in dispute that the transaction in question involves investment of money by the informant with the applicant, who is stated to be the proprietor of Swami Enterprises, for the purpose of investing in the share market. The FIR itself records that the informant was informed that the money was being invested in the share market and she was aware of the risks involved. The FIR also does not indicate that any written agreement was executed between the parties guaranteeing assured or fixed returns.

8. While it is true that false assurances with dishonest intention can amount to cheating under Section 420 of the IPC, it is equally well settled that in every case of default in repayment or failure of business, criminal intent cannot be presumed. The allegations must disclose a dishonest intention from the very inception of the transaction. In the present case, it appears that the applicant and the informant were known to each other and the investment was made voluntarily with the understanding that it would be used in share market trading.

9. Moreover, it is an admitted position that the applicant has already repaid ₹5 lakh and has shown willingness to repay the remaining amount. It is also not the case of the prosecution that the applicant is a habitual offender or that multiple investors have been duped in a similar manner. The learned APP has fairly stated that the applicant has no criminal antecedents and that no other complaint is registered against him in respect of any such fraudulent activity.

10. The applicant has been in custody since 4 October 2024. The investigation is substantially complete and the charge-sheet is likely to be filed or already filed. His continued incarceration may not serve any further purpose, particularly when the offence is triable by the Magistrate and carries a maximum sentence of seven years. The applicant has expressed willingness to abide by any conditions that may be imposed by the Court and also to cooperate with the investigation and trial.

11. In view of the above discussion, considering the nature of the allegations, the absence of criminal antecedents, and the fact that the dispute appears to be predominantly of a commercial and financial nature arising out of an individual transaction, this Court is of the opinion that the applicant deserves to be enlarged on bail, subject to appropriate conditions.

12. Hence, the following order :

(a) The Bail Application is allowed.

(b) The applicant, shall be released on bail in connection with Crime Register No. 662 of 2024 registered with Tilak Nagar Police Station, Dombivali for offences punishable under Sections 420 of the IPC, Sections 3 and 4 of the MPID Act, upon furnishing a Personal Bond of ₹25,000/- (Rupees Twenty-Five Thousand only) along with one or more solvent sureties in the like amount, to the satisfaction of the learned Trial Court, subject to the following conditions:

(c) The applicant shall not tamper with evidence, or directly or indirectly contact, influence, threaten, or intimidate any witness.

(d) The applicant shall report to the Tilak Nagar Police Station, Dombivali on the first Monday of every month between 10.00 a.m. and 12.00 noon, until further orders.

(e) The applicant shall not leave the territorial jurisdiction of the Trial Court without its prior written permission.

(f) The applicant shall not commit any offence or engage in any criminal activity during the pendency of the trial.

(g) The applicant shall, at the time of furnishing surety, provide his current residential address and mobile number to the Investigating Officer as well as the Trial Court, and shall inform the Court in writing of any change in residence or contact details during the pendency of the case.

13. The Bail Application stands disposed of in above terms.

(AMIT BORKAR, J.)